

121 FERC ¶ 61,311
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Ameren Energy Marketing Company Docket No. ER08-185-000

Union Electric Company Docket No. ER08-186-000

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING PROPOSED RATE
SCHEDULES, SUBJECT TO FURTHER ORDER

(Issued December 31, 2007)

1. On November 2, 2007, Ameren Energy Marketing Company (AEM)¹ and Union Electric Company (Union Electric)² (collectively, Applicants) filed, under section 205 of the Federal Power Act (FPA),³ proposed amendments to their ancillary services rate schedules. Applicants request Commission authorization to make ancillary services sales to their affiliates, Central Illinois Public Power Company (CIPS), Central Illinois light Company (CILCO), and Illinois Power Company (Illinois Power) (collectively, Ameren Illinois Utilities) if AEM or Union Electric is a successful bidder in response to a Request for Proposals (2008 RFP). In this order, we conditionally accept the proposed amendments, and suspend them for a nominal period to become effective January 1, 2008, subject to refund and subject to further Commission order. We also direct Applicants to submit compliance filings.

¹ AEM made the filing on behalf of its affiliates Ameren Energy Resources Generating Company (AERG) and Ameren Energy Generating Company (AEG), in Docket No. ER07-185-000. For ease of reference, this order refers to AEM as the applicant in Docket No. ER08-185-000.

² In its application, Union Electric uses the name Union Electric Company d/b/a AmerenUE. However, Union Electric Company is the legally recognized name of this company. Therefore, Union Electric Company is the official name used throughout this order.

³ 16 U.S.C. § 824d (2000).

I. Background

2. Applicants state that, on October 31, 2007, Ameren Services Company (Ameren Services) issued the 2008 RFP for ancillary services products to meet the needs of the Ameren Illinois Utilities beginning January 1, 2008 and continuing until December 31, 2008, or until such time as a centralized market for ancillary services within the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) becomes available, whichever is earlier.

3. On November 2, 2007, AEM filed proposed amendments to AEG's and AERG's ancillary services rate schedules to permit AEM to continue to provide ancillary services, on behalf of AEG and AERG, to the Ameren Illinois Utilities at rates determined through settlement proceedings,⁴ beginning January 1, 2008. AEM explains that AEG's and AERG's current ancillary services rate schedules only permit sales of regulation and frequency response (regulation) service through December 31, 2007. AEM proposes to amend the rate schedules to allow sales of regulation service and spinning reserve service beginning January 1, 2008, at rates that are specified in the Settlement Agreement, if AEM is a winning bidder in the 2008 RFP.

4. On November 2, 2007, Union Electric filed a proposed amendment to its ancillary services rate schedule to permit Union Electric to continue to provide spinning and supplemental reserve services to the Ameren Illinois Utilities beginning January 1, 2008, at rates that are specified in the Settlement Agreement. Union Electric explains that its current ancillary services rate schedule only permits sales through December 31, 2007. Union Electric proposes to extend that termination date so that it may continue to provide ancillary services to the Ameren Illinois Utilities if it is a winning bidder in response to the 2008 RFP.

5. Applicants state that the Ameren Illinois Utilities engaged Ameren Services to issue the 2008 RFP in order to procure ancillary services needed to satisfy the Ameren Illinois Utilities' obligations under the Midwest ISO's Open Access Transmission and Energy Markets Tariff (TEMT). Applicants further state that the Ameren Illinois Utilities' current contracts for procurement of ancillary services, secured through a 2007 RFP, are set to terminate on December 31, 2007, as are AEM's and Union Electric's

⁴ Under a Settlement Agreement filed on October 1, 2007, in Docket Nos. ER07-169 and ER07-170, AEM and Union Electric commit to charge revised rates for ancillary services provided to the Ameren Illinois Utilities for the period commencing January 1, 2007 and ending December 31, 2007. They also commit that the rates contained in any offers that they submit to provide ancillary services to the Ameren Illinois Utilities in response to the 2008 RFP will not exceed rates specified in the Settlement Agreement. An order approving that uncontested settlement is being issued concurrently with this order.

authorizations to sell ancillary services to the Ameren Illinois Utilities. At the same time, Applicants explain, development of the Midwest ISO's ancillary services markets has been delayed such that Midwest ISO-administered markets for the ancillary services at issue here are not expected to be available until June 1, 2008.⁵ Thus, Applicants state that the Ameren Illinois Utilities issued the 2008 RFP to secure ancillary services for an interim period until commencement of the Midwest ISO's ancillary services market.

6. According to Applicants, the 2008 RFP complies with the Commission's standards for approving affiliate sales that result from a competitive procurement process.⁶ They state that the 2008 RFP provided transparency, precise product definition, standard evaluation criteria, and independent oversight to avoid any undue preference in favor of Ameren Services' generation-owning affiliates. Moreover, they state that the 2008 RFP is identical in all key respects to the 2007 RFP that the Commission found to be appropriate for the provision of ancillary services under the circumstances of an interim period.⁷ According to Applicants, the combination of the settlement negotiations and the RFP process to select the most competitive bidders, as the mechanisms for setting the rates, provides ample reason to find that the proposed rates are just and reasonable.⁸

II. Notices of Filings and Responsive Pleadings

7. Notice of AEM's filing was published in the *Federal Register*,⁹ with motions to intervene and protests due on or before November 23, 2007. Timely motions to intervene, raising no substantive issues, were filed by the Midwest ISO and Southwestern Electric Cooperative, Inc. (Southwestern). A timely motion to intervene and comments were filed by Constellation Energy Commodities Group, Inc. (Constellation).

⁵ On September 14, 2007, the Midwest ISO filed a proposal for an ancillary services market in Docket No. ER07-1372-000, with a requested effective date of June 1, 2008.

⁶ See *Boston Edison Company Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382 (1991) (*Edgar*); *Allegheny Energy Supply Co., L.L.C.*, 108 FERC ¶ 61,082 (2004) (*Allegheny*); see also *Southern California Edison Co.*, 106 FERC ¶ 61,183, at P 56, 58 (2004).

⁷ See *Ameren Energy Marketing Co.*, 120 FERC ¶ 61,001 (2007) (Order on Affiliate Abuse Issues).

⁸ AEM's Transmittal Letter at 2; Union Electric's Transmittal Letter at 2.

⁹ 72 Fed. Reg. 64,599 (2007).

8. Notice of Union Electric's filing was published in the *Federal Register*,¹⁰ with motions to intervene and protests due on or before November 23, 2007. Timely motions to intervene, raising no substantive issues, were filed by the Midwest ISO and Southwestern. Constellation filed a timely motion to intervene and comments.

9. Constellation raises the same issues concerning both Applicants' filings. Constellation states that it does not oppose Applicants' filings. However, Constellation states that, out of an abundance of caution, it seeks to clarify its views with respect to certain statements made in Applicants' transmittal letters regarding (1) the negotiation and precedential effect of the Settlement Agreement in Docket Nos. ER07-169 and ER07-170; and (2) the validity of the 2008 RFP being held by Ameren Services for ancillary services to be procured on behalf of the Ameren Illinois Utilities.

10. First, Constellation argues that the Commission should not consider the settling parties' discussions leading up to the Settlement Agreement, and the terms of the Settlement Agreement itself, such as the signatories' promise not to protest the 2008 rates, as affirmative evidence to support acceptance of the proposed 2008 rates.

11. Second, Constellation requests that the Commission refrain from making any findings that might unintentionally implicate whether Applicants' proposed 2008 rates qualify for consideration as "backstop" rates against which to evaluate rates for ancillary services of potential non-affiliated winners of the 2008 RFP.¹¹ Accordingly, Constellation argues that the Commission should defer addressing this issue until it is actually presented in an appropriate filing.

12. Third, with respect to Applicants' claim that the 2008 RFP complies in form with the Commission's standards for affiliate sales through a competitive solicitation process, Constellation states that the 2008 RFP process described in the applications appears to comply with those standards, but the deadline for submitting proposals was November 16, 2007, two weeks after Applicants' filings, and the final results will not be known for some time. Constellation argues that it would be premature to conclude that the 2008 RFP satisfies the affiliate sales standards before Applicants submit evidence that the analysis of the bids or responses did not favor the affiliate, particularly with respect to non-price factors, and that the affiliate was selected based on some reasonable combination of price and non-price factors. Therefore, Constellation argues that the

¹⁰ *Id.*

¹¹ Constellation's Comments at 7.

Commission should defer a ruling on the issue until the 2008 RFP is complete and the results have been announced.¹²

III. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹³ the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they intervened.

B. Substantive Matters

14. Applicants read too much into our determination concerning the 2007 RFP. In our July 2, 2007 Order on Affiliate Abuse Issues,¹⁴ which concerned the 2007 RFP, we found that under circumstances where the Ameren Illinois Utilities needed to procure ancillary services only for an interim period until the Midwest ISO ancillary service market becomes operational, the 2007 RFP was a reasonable and appropriate method to solicit potential suppliers. We also determined that the 2007 RFP did not provide Union Electric and AEM with an undue preference over non-affiliates. However, we specifically found that because the Ameren Illinois Utilities had virtually no generation with which to meet their obligations to provide ancillary services, the Ameren Illinois Utilities were faced with finding an interim supply of ancillary services in a relatively short period of time. It was under those circumstances that we found the 2007 RFP to be a reasonable and appropriate method for the Ameren Illinois Utilities to employ to solicit potential suppliers to temporarily fulfill their ancillary services obligations.¹⁵

15. The Order on Affiliate Abuse Issues further noted that the Ameren Illinois Utilities would probably need to solicit bids to bridge the gap caused by a further delay of the Midwest ISO ancillary services market triggering the need for another RFP to be filed at the Commission under section 205.¹⁶ Finally, we dismissed, as premature, the request to find that the 2007 RFP process can be employed for future ancillary services

¹² Constellation states that it would not object to Applicants making supplemental filings, before the Commission rules, addressing the remaining affiliate sales standards.

¹³ 18 C.F.R. § 385.214 (2007).

¹⁴ *Ameren Energy Marketing Co. and Ameren Energy, Inc.*, 120 FERC ¶ 61,001 (2007).

¹⁵ *Id.* P 14-15.

¹⁶ *Id.* P 17.

solicitations.¹⁷ We believe that it is still premature for us to act based on the record before us. We agree with Constellation that, absent the results of the 2008 RFP, we cannot determine whether the 2008 RFP process satisfies our affiliate abuse concerns.

16. Accordingly, our preliminary analysis indicates that AEM's and Union Electric's proposed amendments to extend affiliate sales at settlement rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will conditionally accept AEM's and Union Electric's proposed rate schedules for filing, suspend them for a nominal period, and make them effective on January 1, 2008, as requested, subject to refund, and subject to further Commission order. In addition, we will direct AEM and Union Electric to submit compliance filings, within 30 days of the date of this order, setting forth the results of the 2008 RFP and the price and non-price factors upon each bid was evaluated to select the winning bidders. The Commission will further evaluate Applicants' proposals following review of the information submitted in the compliance filings and issue a subsequent order on its findings.

The Commission orders:

(A) AEM's proposed amendments to its ancillary services rate schedule in Docket No. ER08-185-000 are hereby conditionally accepted for filing and suspended for a nominal period, to become effective on January 1, 2008, subject to refund, and subject to further order, as discussed in the body of this order.

(B) AEM is hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

(C) Union Electric's proposed amendments to its ancillary services rate schedule in Docket No. ER08-186-000 are hereby conditionally accepted for filing and suspended for a nominal period, to become effective on January 1, 2008, subject to refund, and subject to further order, as discussed in the body of this order.

¹⁷ *Id.*

(D) Union Electric is hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.
Deputy Secretary.